



defendant wants, the defendant has waived rather than simply forfeited any argument that things should have been done otherwise.”); *Haitian Refugee Center v. Civiletti*, 614 F.2d 92, 93 (5th Cir. 1980) (“The defendants cannot appeal from an injunction to which they agreed.”); *Amstar Corp. v. S. Pac. Transport Co. of Texas and Louisiana*, 607 F.2d 1100, 1100 (5th Cir. 1979) (holding that appellate review was unavailable even if the order includes express recognition that one party intends to appeal). The concern over waiver was further reinforced by absence of any language in the Court’s Order to reassure the parties of their appellate rights. *Compare* Order requiring meet and confer, D.E. 222, PageID# 3692, *with Curves, LLC v. Spalding County*, 569 F. Supp. 2d 1305, 1315 (N.D. Ga. 2007) (assuring the parties that a joint proposed injunction “would not waive any legal position of either party for purposes of appeal.”)

After discussing the matter extensively with their clients, counsel for Defendants concluded that agreed language on the injunction was possible. In short, the benefits of any agreed language for the injunction order would have to outweigh the cost of potentially losing the ability to appeal. Having defined this window of agreeability for themselves, Defendants entered the meet and confer in good faith.

At the outset of the meet and confer, counsel for Defendants explained to counsel for TN NAACP that Defendants perceived that making a proposal could create procedural hurdles on appeal. Counsel for Defendants further explained that Defendants were open minded and willing to consider TN NAACP’s proposal. Counsel for Defendants listened to TN NAACP’s proposal, asked probing questions about certain aspects of the proposal, and took extensive notes. Then, counsel for Defendants spent nearly an hour discussing this proposal with Defendants. However, as the Court noted in its order calling for objections to the proposed order of each party, Defendants and the TN NAACP have “little-to-no common ground” on what language should be included in

the injunction order. (Order on Proposed Orders, D.E. 229, PageID# 3722.) The Court's observation about the proposed orders was abundantly clear at the meet and confer—little-to-no common ground existed. Indeed, TN NAACP's proposal at the meet and confer and their proposed order of injunction, (TN NAACP's Proposed Order, D.E. 226-1), seek to rewrite Tennessee's election statutes and procedures, a deal-breaker for Defendants. As Defendants stated in their summary-judgment briefing, precedent makes clear that injunctions requiring States to implement new procedures to remedy constitutional deficiencies in their electoral framework are improper. *Thompson v. DeWine*, 976 F.3d 610, 620 (6th Cir. 2020). Moreover, TN NAACP's proposal went well beyond the holdings in the Court's memorandum opinion. (*See* Mem. Opinion, D.E. 221). TN NAACP's proposed language was a non-starter.

After extensive consultation, counsel for Defendants saw no reasonable pathway to language within the window of agreeability. Perceiving further negotiations to be futile, counsel for Defendants declined TN NAACP's proposal and politely concluded the meet and confer. In compliance with the Court's Order, counsel for Defendants drafted the joint status report to notify the Court that the parties could not agree on the injunction language. (*See* Order requiring meet and confer, D.E. 222.) After approval from TN NAACP, the joint status report was filed. (Joint Status Report, D.E. 224.)

For these reasons, Defendants respectfully assert that they participated in the meet and confer in good faith.

Respectfully submitted,

JONATHAN SKRMETTI  
Attorney General and Reporter

/s/ Zachary L. Barker

ZACHARY L. BARKER, BPR # 035933  
Assistant Attorney General

ANDREW COULAM  
Deputy Attorney General

DAWN JORDAN  
Senior Counsel

DAVID RUDOLPH  
Senior Assistant Attorney General

ROBERT WILSON  
Senior Assistant Attorney General

Public Interest Division  
Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202-0207  
[Zachary.Barker@ag.tn.gov](mailto:Zachary.Barker@ag.tn.gov)

*Counsel for Defendants*

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the above document has been forwarded electronically. Notice of this filing will be sent by the Court's electronic filing system to the parties named below. Parties may access this filing through the Court's electronic filing system.

Blair Bowie  
Danielle Lang  
Alice C. Huling  
Valencia Richardson  
Aseem Mulji  
Ellen Boettcher  
Kate Uyeda  
Campaign Legal Center  
1101 14<sup>th</sup> Street NW, Suite 400  
Washington, DC 20005

Phil Telfeyan  
Natasha Baker  
Equal Justice Under Law  
400 7<sup>th</sup> St. NW, Suite 602  
Washington, DC 20004

Charles K. Grant  
Denmark J. Grant  
Baker, Donelson, Bearman  
Caldwell & Berkowitz, P.C.  
1600 West End Avenue, Suite 2000  
Nashville, TN 37203

Keeda Haynes  
Free Hearts  
2013 25<sup>th</sup> Ave. N.  
Nashville, TN 37208

Date: May 17, 2024

/s/ Zachary L. Barker  
Assistant Attorney General